

**GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

BCWD – Establishment – Suits – High Court of AP – W.P.No.27227 of 2008 – Filed by Sri.S.Srinivas, former Hostel Welfare Officer, Grade-I, GBCBH, Jagityal, Karimnagar District and presently working as ABCWO, Jagityal, Karimnagar District – Challenging the Government Memo No.1234/A1/2004, BC Welfare (A1) Department, dt.2.6.2007 and orders of APAT in OA No.3271 of 2006, dt.4.9.2008 - W.P dismissed and upheld the Govt., Memo and Tribunal order dt.2.6.2007 – Implementation of the orders of High Court of AP, dt.11.2.2010 – Orders – Issued.

BACKWARD CLASSES WELFARE (A) DEPARTMENT

G.O.Rt.No. 150

Dated.04.05.2010

Read the following: -

1. G.O.Ms.No.176, SW (A2) Dept., dt: 15.11.1976.
2. G.O.Ms.No.36, BCW (C2) Dept., dt: 9.7.1996.
3. From Sri.G.Chakrapani, HWO, Pothgal, Karimnagar, appeal dt.23.3.2004
4. Govt., Memo No.1234/A1/2004, BC Welfare (A1) Department, dt.2.6.2007
5. Judgment of APAT in OA No.1804/2005, OA No.3224/2007 and OA No.3271/2007, dt.4.9.2008
6. Govt., Memo No.2414/A/2007-4, BC Welfare (A) Department, dt.20.10.2008
7. From the Commissioner, BC Welfare, Lr.Rc.No.A1/3647/2007, dt.14.9.2009
8. From the Commissioner, BC Welfare, Lr.Rc.No.A1/9427/KRMN/2009, dt.22.10.2009
9. G.O.Rt.No.371, BC welfare (A) Department, dt.26.12.2009
10. Government Memo No.2079/A/2009-4, dt.23.1.2010
11. Judgment of High Court of AP, dt.11.2.2010 in W.P.No.27227/2008

ORDER:

The Commissioner, BC Welfare in his letters 7th and 8th read above has stated that Sri G.Chakrapani and Sri S.Srinivas are the HWOs of Karimnagar District. The District Collector, Karimnagar appointed both of them as Grade-II HWOs vide Procs. No. LA.4/92/1985, dt: 21-06-1985. Both have joined duty on the same day i.e., 25.06.1985. The services of both the individuals were regularized w.e.f. 25.06.1985 and their probation was also declared on 25.06.1987. Sri.G.Chakrapani has passed the Accounts Test for Subordinate Officers Part-I on 17.06.1990, whereas Sri.S.Srinivas passed the same on 16.06.1996. As per the service rules, every Grade-II HWO shall pass the Accounts Test for Subordinate Officers Part-I during the period of probation (2 years) or during the extended period of probation (1 year). It is a prerequisite for declaration of probation. But, none of the two has passed the prescribed Departmental Test either during the period of probation or during the extended period of probation. Both of them have passed the said Test beyond the extended period of probation. As such, the probation of the individuals declared by District Collector, Karimnagar is irregular.

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2. He has further stated that the District Collector, Karimnagar promoted Sri.S.Srinivas as Grade-I HWO vide his Procgs.Rc.No. A/88/1997, dt:02.04.1997. Sri.G.Chakrapani has passed the prescribed Departmental Test prior to Sri.S.Srinivas. Later on, the District Collector, Karimnagar regularised the services of Sri S. Srinivas in the cadre of Grade-I HWO vide Procgs.Rc.No.A/682/1998, dt:02.07.1998. Sri.G.Chakrapani has filed an appeal dt:20.8.1998 before the Commissioner of BC Welfare against the above service regularization orders of Sri.S.Srinivas in the cadre of Grade-I HWO issued by the District Collector, Karimnagar and requested to restore his seniority in the cadre of Grade-II HWO and promote him as Grade-I HWO w.e.f. 02.04.1997 i.e., from the date of promotion of Sri S. Srinivas as Grade-I HWO. He has also approached the Hon'ble APAT in O.A.No. 6485/1998 in this regard and on 21.09.1998, the Tribunal has directed the 1st respondent i.e., Commissioner of B.C. Welfare to dispose of the representation of the applicant, dt:20.08.1998. Based on the clarification issued on the representation of Sri.G.Chakrapani by the Commissionarate vide Lr.No.A1/6416/1998 dt:02.06.1999, the District Collector, Karimnagar has reverted Sri.S.Srinivas vide Procgs.Rc.No.A/2011/1998, dt:07.07.1999 and promoted Sri.G.Chakrapani as Grade-I HWO.

3. Aggrieved by his reversion, Sri.S.Srinivas approached the Hon'ble High Court in W.P.No. 14396/1998, praying the suspension of the Judgment of the Hon'ble APAT in O.A.No. 6485/1998, dt:21.09.1998 and the connected orders of the Commissioner of BC Welfare vide Lr.No. A1/6416/1998, dt:02.06.1999 and the orders of the District Collector, Karimnagar vide Procgs. Rc.No. A/2011/1998 dt:07.07.1999. On 19.08.1999, the Hon'ble High Court has ordered for "**Interim suspension and Notice**". That keeping in view of the above mentioned orders of the Hon'ble High Court, the District Collector, Karimnagar has issued orders vide Procgs.No.A/2011/1998, dt:10.09.1999 for continuation of Sri.S.Srinivas as Grade-I HWO and Sri.G.Chakrapani as Grade-II HWO until further orders.

4. He has further stated that as per the Judgment of Hon'ble APAT dt:05.10.2001 in O.A.No.6801/2001 filed by SriS.Srinivas and the Judgment of the Hon'ble APAT dt:09.04.2003 in O.A.No. 5331/2002 and O.A.No.5376/2002 filed by Sri.G.Chakrapani, the District Collector, Karimnagar has issued notice to Sri.S.Srinivas on 30.04.2003 to submit his explanation in his defense, as to why he should not be reverted as Grade-II HWO, as he is junior to Sri.G.Chakrapani. The individual has submitted his explanation on 08.05.2003. As the explanation received from the individual was not convincing, the District Collector, Karimnagar has issued orders of reversion to Sri.S.Srinivas as Grade-II HWO and orders of promotion to Sri.G.Chakrapani as Grade-I HWO vide Procgs No. A/2011/1998, dt:13.08.2003.

5. He has further stated that again Sri.S.Srinivas has filed an appeal petition before the Commissioner of BC Welfare on 20.08.2003 against the orders of reversion issued to him by the District Collector, Karimnagar vide Procgs.No.A/2011/1998, dt:13.08.2003. He has also approached the

Hon'ble APAT in O.A.No.6154/2003. The Hon'ble APAT in its order dt:22.09.2003 has directed the Commissioner, BC Welfare to dispose of the appeal filed by the Applicant in accordance with the rules within four weeks from the date of receipt of orders. Further, the Hon'ble APAT has also ordered that till the disposal of appeal and stay petition filed by the Applicant (Sri.S.Srinivas), Status-quo as on today should be maintained by the respondents.

6. He has further stated that basing on the appeal petition of Sri.S.Srinivas, the Commissioner of B.C. Welfare has issued clarification to the District Collector, Karimnagar vide Lr.Rc.No.A1/4023/2003, dt:17.01.2004. Consequent to the issue of clarification by him to the District Collector, Karimnagar, a notice was issued to Sri.G.Chakrapani on 09.02.2004 as to why he should not be reverted as Grade-II HWO. The individual has in turn submitted his explanation on 05.03.2004. After perusal of the explanation received from the individual, the District Collector, Karimnagar has issued orders of reversion to Sri.G.Chakrapani as Grade-II HWO and ordered of promotion to Sri.S.Srinivas as Grade-I HWO vide Procs.No. A/2011/1998, dt:17.03.2004.

7. Sri.G.Chakrapani has filed an appeal before the Government against the clarification issued by the Commissioner of B.C. Welfare to the District Collector, Karimnagar vide his Lr.No.A1/4023/03, dt:17.01.2004. The Government in the reference 4th read above has stated that both Sri.S.Srinivas and Sri.G.Chakrapani have passed the requisite Departmental Test after the extended period of probation. Hence, the Rule 16 (h) of AP State and Subordinate Service Rules, 1996 is applicable in this case. As per the rule, the dates of commencement of probation will change based on the date of passing of requisite Departmental Test and such dates of commencement will have to be taken into account for arriving at the seniority. Since Sri.G.Chakrapani has passed the requisite Departmental Test (17.06.1990) prior to the passing of the said Test by Sri.S.Srinivas (16.06.1996), Sri.G.Chakrapani is senior to Sri.S.Srinivas. Hence, the Government have requested the District Collector, Karimnagar to fix the seniority of Sri.G.Chakrapani and Sri.S.Srinivas in terms of Rule 16 (h) of A.P. State and Subordinate Service Rules, 1996 duly following the principles of natural justice i.e., after issuing show cause notice to the affected party.

8. Aggrieved by the above clarification, Sri.S.Srinivas has filed OA before the Hon'ble Tribunal. The Hon'ble APAT in its order 5th read above has made the following observations:-

“Government has determined that both the individuals have passed the prescribed Departmental Test beyond the extended period of probation. It is difficult to understand how the Government, in the absence of any order issued by them in terms of Rule 31 relaxing the relevant Rules in favour of the individuals, directed the District Collector, Karimnagar to invoke the provisions contained in Rule 16 (h) of APSSS Rules, 1996.”

As can be seen from Rule 16 (h), an order under Rule 31 is a condition – precedent for an order under Rule 16 (h). The Memo has not been issued after the Government exercising their powers under Rule 31.

As a result, the O.A. is remitted back with a direction to the Government to review the entire case and determine the inter-se seniority between Sri.G.Chakrapani and Sri.S.Srinivas as per the rules”.

9. The Government have communicated the above orders of the Hon’ble APAT to the Commissioner of B.C. Welfare with a request to furnish the necessary proposals for extension of probation period in respect of both the individuals for processing the case further. Basing on the above Government Memo, the Commissioner, BC Welfare has requested the District Collector, Karimnagar to furnish the same vide his Office Lr.Rc.No. A1/3647/2007, dt: 03.11.2008.

10. Meanwhile, Sri.S.Srinivas has approached the Hon’ble High Court and filed W.P.No. 27227/2008 seeking for suspension of the operation of orders of the Hon’ble APAT, dt: 04.09.2008 in so far as remitting back the matter to Government for fresh consideration in accordance with Rule 16 (h) of APSSS Rules, 1996. The Hon’ble High Court in its interim order dt:15.12.2008 made the following:

“There shall be Interim suspension as prayed for”.

11. The High Court of AP in its final Judgment, dt:11.2.2010 in W.P.No.27227/2008 while dismissing the W.P with costs has made following serious observations and the same extracted below:

- a. “Looking at the facts, therefore we have a serious doubt whether the petitioner Sri.S.Srinivas and the 5th respondent Sri.G.Chakrapani have ever worked in their official positions at all, as apparently they were busy litigating against each other either before the official respondents or before this Court.
- b. The petitioner has continued to hesitate this Writ Petition, we are of the view that the conduct of the petitioner is wholly unjustified and in view of the principle that the costs follow the event, we are of the view that the Writ Petition is clearly frivolous and **was prosecuted only to hang on the Interim Order and the promotional post to which the petitioner has been held to be not entitled.**

12. The High Court of AP, while upholding the Govt., Memo, dt:2.6.2007 has dismissed the W.P with costs. The High Court of AP, while dismissing the WP has also directed the Govt., to reconsider and pass appropriate orders on the appeal of Sri.G.Chakrapani, the 5th respondent as directed by the Tribunal within 4 weeks from the date of the receipt of the copy of the order. The Court has also directed to pass a reasoned order and communicate the same to the petitioner as well as the 5th respondent.

13. In pursuance of the orders of APAT 5th read above, the Commissioner, BC Welfare has furnished proposals in respect of Sri.G.Chakrapani for extending the period of probation. Govt., have issued orders in G.O.Rt.No.371, BC Welfare (A) Dept., dt:26.12.2009, extending the period of probation of Sri.G.Chakrapani w.e.f. 25.6.1985 to 23.5.1989, revising the date of commencement of probation as 24.5.1989 and declaring probation as 23.5.1991 among others. The proposal in respect of Sri.S.Srinivas is still awaited.

14. Government after examining the whole issue in detail has decided to revert Sri.S.Srinivas ABCWO, Jagityal to the cadre of Gr.II HWO as he is junior to Sri.G.Chakrapani who is still working as HWO Gr.II. Government have also decided to request the Director, BC Welfare to furnish necessary proposals for extension of probation period in respect of Sri.S.Srinivas.

15. Accordingly, Government hereby order that Sri.S.Srinivas, ABCWO, Jagityal, Karimnagar District be reverted to the cadre of HWO Gr.II with immediate effect. Government also direct the Director, BC Welfare to furnish necessary proposals for extension of probation in respect of Sri.S.Srinivas.

16. The Director, BC Welfare shall take necessary further action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Dr.A.VIDYA SAGAR
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Director, BC Welfare, AP, Hyderabad
The District Collector, Karimnagar
The Individuals through the Director, BC Welfare.
The Registrar, APAT, Hyderabad
The Registrar, High Court of A.P., Hyderabad
The DBCWO, Karimnagar
The DTO, Karimnagar
Copy to:
The Law Department, A.P. Secretariat, Hyderabad
The G.A. (Services-D) Department, A.P. Secretariat, Hyderabad
The PS to Principal Secretary, BCWD
SF/SC

// forwarded by order //

Section Officer